

Application of Simon Erani
Serial No. 09/922,233 filed 8/3/2001
Response of 6/7/2004 to Office Action of 12/5/2003

Remarks

Receipt is acknowledged of the Office Action of December 5, 2003 in the above-captioned matter. Reconsideration of the application, and a three month extension of the time provided for response are respectfully requested. Applicant further requests continued examination of the application (as also forth on the attached sheet), and encloses an Information Disclosure Statement. The Commissioner is hereby authorized to charge Deposit Account No. 50-1604 for all fees required (including the fees for the additional claims), and it is requested that any overpayments be credited thereto.

In the Office Action, the claims of the application were rejected over French Patent 2,746,008 in combination with Brooks II. Reconsideration of the rejection is respectfully requested.

With respect to Vitamin C, as noted in the response to the prior Office Action, the compound claimed in the present invention is not the form of Vitamin C commonly used (which is known as ascorbic acid). Rather, ascorbylmethylsilanol pectinate is claimed, which is a relatively uncommon form of this vitamin.

Likewise, with respect to Vitamin D, the common form is not claimed herein, but rather what is claimed is a relatively uncommon form known as cholecalciferol polypeptide (also referred to as Vitamin D Polypeptide or VITAZYME® D).

None of the references teach or suggest a combination containing these particular two components, components which are themselves relatively unusual or obscure.

Although the Examiner has cited French Patent 2,746,008 for disclosing ascorbylmethylsilanol

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pectinate (Ascorbosilane C), the Examiner has not identified any particular teaching or suggestion in any of the references of record to provide a composition which combines that material with cholecalciferol polypeptide (also referred to as Vitamin D Polypeptide or VITAZYME® D).¹ Nor, conversely, has any particular teaching or suggestion been identified (in Brooks II or otherwise) to combine cholecalciferol polypeptide with Ascorbosilane C. Nor have any references been identified in any manner teaching or suggesting a single composition comprising the particular combination of five components disclosed in Claim 1.

In fact, a search of the records of the patent office indicates that, as of last week, only three U.S. patents appear to have ever issued in which ascorbylmethylsilanol pectinate (Ascorbosilane C) composition was disclosed in any manner.² Likewise, no patents appear to have issued disclosing cholecalciferol polypeptide.³

On the other hand, there no doubt hundreds or perhaps thousands of U.S. patents which refer to standard Vitamin C and/or Vitamin D. In other words, within the hundreds or thousands of possible U.S. patents as to Vitamin C and/or Vitamin D, no references have been identified which teach or suggest the currently claimed combination of these unusual forms of these vitamins instead of standard

¹ No translation was provided of the '008 reference, which is in French, and thus counsel cannot make any comprehensive review of its contents. However, there does not appear to be anything therein referring to cholecalciferol polypeptide.

² The patents that have been identified are attached in an enclosed IDS.

³ These are the results of our search conducted within the past few days; however, it is requested that the Examiner independently search these compositions to confirm.

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forms. It is submitted that this further indicates the non-obviousness of the present invention.

The searches conducted by the Examiner further demonstrate that these combinations have never been shown before in the art. Indeed, considering that standard forms of Vitamins C and D are well known, and in view of the millions of dollars (or perhaps hundreds of millions or billions of dollars) that have been spent in the past researching compositions for skin treatment, the fact that not a single reference has been cited showing the claimed combination in any manner further shows and demonstrates that the claimed combinations are completely non-obvious. It likely that there are many references teaching the combination of various vitamins – yet not a single one has been cited or shown disclosing the combinations which are the subject of the pending claims. This further demonstrates that this combination did not exist and was not obvious before the invention by the Applicant, and that the extensive experimentation which led to the claimed compositions constitutes non-obvious invention.

While it is, of course, possible to currently find references that disclose these individual substances (since Applicant does not profess to have invented the substances themselves), it is respectfully submitted that no teaching or suggestion has been pointed to teaching or suggesting the combinations which are the subject matter of the present claims.

For example, with respect to Claim 2, there is nothing in the record as to why it would be obvious to use ascorbylmethylsilanol pectinate with cholecalciferol polypeptide (VITAZYME® D) instead of using VITAZYME® C (ascorbic acid polypeptide). VITAZYME® C, in fact, is the form of Vitamin C which Brooks II actually teaches and is not the same as ascorbylmethylsilanol pectinate. Having specifically disclosed a polypeptide form of Vitamin C, it is non-obvious to omit that Vitamin C polypeptide which Brooks specifically teaches and to use a different form of Vitamin C instead.

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Likewise, with respect to Claim 1, five separate individual vitamin components are recited in that claim, yet not a single reference appears to teach or suggest that four should be Brooks' polypeptide forms of the vitamins (as opposed to other forms of each of those vitamins), and that the fifth component should be the ascorbylmethylsilanol pectinate form of Vitamin C (as opposed to other forms of Vitamin C or even Brooks II's own form, VITAZYME® C). Nothing in the prior art, taken as a whole, teaches or suggests this particular combination of those components together. Rather, the combinations can only be apparent, if at all, in hindsight, in full knowledge of Applicant's invention.

Furthermore, nothing has been cited which would indicate that the components of the claims would even be effective in combination or that the components claimed would be reasonably expected to work well together in general or with ascorbylmethylsilanol pectinate in particular. Combinations of two or more substances can often have significantly different properties than the properties of individual components, particularly with respect to chemical compounds.

Likewise, there is nothing at all in the references teaching or suggesting the particular formulations recited in the dependent claims in any manner. For example, the 95: 1.25: 1.25: 1.25: 1.25 ratios can not be deemed obvious in view of any of the references.

In the event that any further rejections are contemplated on any of the claims, an interview is respectfully requested to discuss the references further. Unless there is further art which specifically teaches or suggests the claimed combinations of components to create a new composition for treatment of the skin, it is respectfully submitted that the combinations are fully patentable.

Applicant has also amended the application to slightly broaden the scope of certain of the prior claims and to further claim the method of use of the compositions for application to the skin, as recited

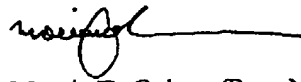
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in several new claims.

In view of the above, reconsideration of the rejections is respectfully sought. Favorable action on all of the claims is respectfully requested and believed fully warranted.

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Respectfully submitted,



Morris E. Cohen (Reg. No. 39,947)
1122 Coney Island Avenue, Suite 217
Brooklyn, New York 11230
(718) 859-8009 (telephone)
(718) 859-3044 (facsimile)